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No. 84-1598

In the Supreme Court of the United States

OCTOBER TERM, 1984

MOSE HOLLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order suppressing evidence and oral admissions following his warrantless arrest.

On March 15, 1983, petitioner was charged in a superseding indictment returned in the United States District Court for the Western District of New York with distribution and possession of a controlled substance (cocaine), in violation of 21 U.S.C. 841(a)(1). Before trial, petitioner moved to suppress the physical evidence seized from his person and the oral admissions that he made following his warrantless arrest on the ground floor entranceway to a common hallway, serving both petitioner's second floor apartment and a separate first floor apartment. On February 24, 1984, the district court suppressed the physical evidence and oral admissions on the ground that petitioner's warrantless arrest was illegal under *Payton* v. *New York*, 445 U.S. 573

(1980), because he was "inside his home" when the arrest took place (Pet. App. A15-A25). The court of appeals reversed in a split decision, concluding that this Court's decision in *Payton* did not broaden the definition of home so as to include the entrance to a common hallway (Pet. App. A1-A14).

Petitioner contends (Pet. 5-12) that the Fourth Amendment prohibits the police from making a warrantless non-exigent arrest of a person at the entrance of the common hallway serving both his apartment and a second apartment. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

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[1]It is now over 25 months since the return of the superseding indictment and over 14 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in the trial of the charges against petitioner.

[2]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MAY 1985